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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,901	02/23/2004	Tadashi Hagihara	2004_0284	5933

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EXAMINER

BUECHNER, PATRICK M

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/782,901

Applicant(s)

HAGIHARA, TADASHI

Examiner

Patrick M Buechner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-16 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 23 February 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/959,924.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/23/04.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

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DETAILED ACTION

Response to Arguments

1. Examiner stated in the interview summary in parent application 09/959,924, dated 2/24/04, that the language "welds forming the nozzle body" would better delineate the claim from the prior art. However, a further review of Rodgers shows, as discussed below, that the language suggested does not clearly define the claim over the prior art.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herzig in view of Rodgers.

Herzig clearly discloses:

- a nozzle (11) formed of two flexible sheets (22, 23) welded/heat sealed at peripheral portions (14,15) and having close contact to create a seal to be broken via internal pressure of the fluid (Figure 1, 2b, 3);
- a border line/crease (19 column 1, lines 54-65).

Herzig also discloses that the crease is made by plastic deformation (column 2, lines 24-29), and that at least one of the sheets is non-planar prior to the contents being forced toward an

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upstream side of the nozzle to prevent further leakage (Figures 2, 3, 4 and column 4, lines 24-26).

Herzig does not disclose the welded portions having a greater width on an upstream side of the nozzle body than on a downstream side.

Roders teaches a flexible container having a nozzle with linear welded portions that form the nozzle body having greater width at an upstream side of the nozzle body than on a downstream side, see Figure 1, in particular the welded portion bounding the throat portion (44) at the upstream side of the nozzle body and the welded portion bounding the tapered section (46) at the downstream side of the nozzle body.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the container of Herzig with the construction as taught by Roders.

Doing so would create a venturi that would help keep the fluid from leaking from the container.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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5. Claims 1-3, 5-8, 10, 11 and 13-16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 30, 32, 36, 37, 52, 26, 28 of copending Application No. 09/959,924. Although the conflicting claims are not identical, they are not patentably distinct from each other because the cited claims of application No. 09/959,924 clearly disclose all the limitations of claims 1-3, 5-8, 10, 11 and 13-16.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. The claims correspond as follows:

Application 10/782,901	Application 09/959,924
1	30, 32, 36, 37
2	30, 32, 36, 26, 37, 52
3	32, 36, 26, 28
5	30, 32, 36, 37
6	30, 32
7	30, 32
8	30, 32, 37, 52
10	30, 32, 36, 37
11	30, 32, 37, 52
13	30, 32, 36, 37
14	30, 32
15	30, 32
16	30, 32, 37, 52

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6. Claims 9 and 12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 36, 30, 32 of copending Application No. 09/959,924 in view of Roders. Claims 36, 30, 32, 37 and 52 of Application No. 09/959,924 clearly disclose all the limitations of claims 9 and 12 with the exception of the welded portions having substantially linear sides. Roders teaches the welded portions having substantial linear sides (Figure 1). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the welds of application No. 09/959,924 with linear sides as taught by Roders, as it would be simpler to manufacture linear sides as opposed to any other shape, such as curved.

This is a provisional obviousness-type double patenting rejection.

7. Claim 4 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 36, 26, 28, 32 of copending Application No. 09/959,924 in view of Herzig. Application No. 09/959,924 clearly discloses all the limitations of claim 4 with the exception of the crease being formed by plastic deformation, and is in fact silent as to how the crease is formed. Herzig teaches the crease formed by plastic deformation (as discussed above). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to form the crease of application No. 09/959,924 by plastic deformation as taught by Herzig, since application No. 09/959,924 is silent as to how the crease is made and one of ordinary skill would necessarily look to the prior art to determine how the crease could be made and Herzig teaches a similar crease and how it is made.

This is a provisional obviousness-type double patenting rejection.

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Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick M Buechner whose telephone number is (703) 308-2602.

The examiner can normally be reached on 7:00am-4:30pm M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PB

Gene Mancene
Supervisor Examiner

Gene Mancene
Supervisor Examiner

